

STATEMENT OF CONSIDERATION RELATING TO
907 KAR 15:080

Department for Medicaid Services
Amended After Comments

(1) A public hearing regarding 907 KAR 15:080 was not requested and; therefore, not held.

(2) The following individuals submitted written comments regarding 907 KAR 15:080:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Kathy Adams, Director of Public Policy	Children's Alliance

(3) The following individual from the promulgating agency responded to comments received regarding 907 KAR 15:080:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Leslie Hoffmann, Director	Department for Medicaid Services, Division of Community Alternatives
Ann Hollen, Program Manager	Department for Medicaid Services, Division of Community Alternatives
Jonathan MacDonald, Policy Analyst	Department for Medicaid Services, Commissioner's Office
Stuart Owen, Regulation Coordinator	Department for Medicaid Services, Commissioner's Office

SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Full range of services

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, stated the following:

"Page 3, line 10 Section 2(1)(a)4.a. – Request clarification of what "the full range of the service" means. Should specific provisions within this regulation be cited rather than simply stating "as established in this administrative regulation"? Recommend amending the regulation to provide clarification of the expectation(s) and the specific applicable regulatory provisions, as this would be helpful to providers."

(b) Response: There are provisions specific to each service in the administrative

regulation; thus, many parts of the administrative regulation are applicable. The Department for Medicaid Services (DMS) believes that “full range of services” is an adequate indication of the requirement as is.

(2) Subject: Language clarification for “center”

(a) Comment: Kathy Adams, Director of Public Policy, Children’s Alliance, stated the following:

“Page 3, line 12 Section 2(1)(a)4.b. requires the “center” to have documented experience in serving individuals with behavioral health disorders. Should the requirement apply to the center’s staff instead of the center? If so, recommend the regulation be amended accordingly.”

(b) Response: DMS believes that “the center” is understood to include its staff.

(a) Comment: Kathy Adams, Director of Public Policy, Children’s Alliance, stated the following:

“Page 14, line 18 (3)(f)3.b. requires the “center” to have knowledge of substance use disorders. Shouldn’t this requirement apply to the center’s staff instead of the center? If so, recommend the regulation be amended accordingly.”

(b) Response: DMS believes that “the center” is understood to include its staff.

(3) Subject: Audits

(a) Comment: Kathy Adams, Director of Public Policy, Children’s Alliance, stated the following:

“Page 3, line 17 Why does Section 2(1)(b) limit audits by the enumerated entities (1-6) specifically to the documentation referenced in (a)4.b.? Would these entities not have the ability to audit the requirements in 4. a – e and perhaps even other provisions in the regulation?”

(b) Response: Correct, other items are also subject to audit. DMS inserted the audit language in this subsection in response to public comments regarding the same provisions in related behavioral health administrative regulations and inserted the language in this administrative regulation to ensure consistency.

(4) Subject: Peer Support

(a) Comment: Kathy Adams, Director of Public Policy, Children’s Alliance, stated the following:

“Page 14, line 22 (3)(g)2.a. Recommend that the phrase “to a recipient” be deleted as

peer support is not always provided to the recipient. Sometimes it is provided to the recipient's parent or family member, as in a. (ii) and a. (iii). 907 KAR 15:020 does not include this phrase when describing Peer Support Services."

(b) Response: Via an "amended after comments" administrative regulation DMS is deleting the phrase "to a recipient" as recommended.

(5) Subject: Clarity of provision

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, stated the following:

"Page 15, line 2 (3)(g)1.a.(i)-(iii) – these provisions are extremely lengthy and confusing. Request that these provisions be amended to ensure the intent is clear and concise. Minimally, request that commas be added for clarify.

(g)1. Peer support services shall:

a. Be emotional support that is provided to a recipient by:

(i) An individual, who has been trained and certified in accordance with 908 KAR 2:220 or 907 KAR 2:240 and who is experiencing, or has experienced, a substance use disorder, to a recipient by sharing a similar substance use disorder in order to bring about a desired social or personal change;

(ii) A parent, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a substance use disorder, to a parent or family member of a child sharing a similar substance use disorder in order to bring about a desired social or personal change; or

(iii) A family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a substance use disorder, to a parent or family member of a child sharing a similar substance use disorder in order to bring about a desired social or personal change;".

(b) Response: There are a lot of requirements indeed in the subsection but DMS and Cabinet for Health and Family Services staff believe that the punctuation in the administrative regulation is correct and as it was approved by the Legislative Research Commission (which reviews for punctuation and grammar prior to filing), DMS prefers to leave the punctuation as is.

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, stated the following:

"Page 19, line 14 (3)(j)4. Recommend this provision be amended for clarity accordingly:

4. The provider shall keep individual notes regarding each recipient of the group and within each recipient's individual health record."

(b) Response: DMS believes that it is unnecessary to state "individual health record" and prefers to keep the language as is.

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, stated the following:

"Page 20, line 3-4 For clarity, recommend that (3)(k)3.a.(i) and (ii) be amended accordingly:

3. Family outpatient therapy shall:

a. Be provided to promote the:

- (i) Health and well-being of the recipient individual; or
- (ii) The recipient's recovery from a substance use disorder; and"

(b) Response: DMS is revising the language regarding family outpatient therapy as follows in an "amended after comments" administrative regulation:

"3. Family outpatient therapy shall:

a. Be provided to promote the:

- (i) Health and well-being of the recipient[individual]; or
- (ii) Recipient's recovery from a substance use disorder; and".

Additionally, as the same language exists for individual outpatient therapy and group outpatient therapy DMS is also revising the language accordingly regarding those services.

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, stated the following:

"Page 21, line 7 For clarity, recommend that (3)(m)2.c. be amended accordingly:

c. Referring a recipient to additional substance use disorder services if the recipient is determined to need additional services to address their substance use."

(b) Response: DMS is revising the language as follows in an "amended after comments" administrative regulation:

"2. Consist of:

a. Using a standardized screening tool to assess an individual for risky substance use behavior;

b. Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice to the recipient; and

c. Referring a recipient to additional substance use disorder services if the recipient is determined to need additional services to address the recipient's substance use."

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, stated the following:

"Page 21, line 8 For clarity, should (4) be a subparagraph of (3)(a) instead of it's own subsection, since it is specific to a "screening"?"

(b) Response: Subsection (3) relates to a screening, brief intervention, and referral to treatment (SBIRT) while subsection (4) relates to a screening. As they are two (2) different services DMS prefers to keep the formatting as is.

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, stated the following:

"For clarity, recommend that (14)(b)3.c. be amended to add the word "the" before the words "managed care organization" so that it reads:

c. For an enrollee, the managed care organization in which the enrollee is enrolled."

(b) Response: DMS is revising the language as recommended in an "amended after comments" administrative regulation.

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, stated the following:

"Page 23, line 7 and 8, For clarify, recommend that commas be added to (3)(a)2.b. and c. accordingly:

b. Assessment₁ if an assessment was performed; and

c. Disposition₁ if a disposition was performed;".

(b) Response: DMS and Cabinet for Health and Family Services staff believe that the punctuation in the administrative regulation is correct and as it was approved by the Legislative Research Commission (which reviews for punctuation and grammar prior to filing), DMS prefers to leave the punctuation as is.

(6) Subject: Diagnosis or clinical impression

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, stated the following:

"Page 21, line 10, As drafted, subsection (5) reads that "a diagnosis or clinical impression shall be made" using the APADSMMD. Not all services require that a diagnosis or clinical impression be made. Recommend that this provision be rewritten to clarify that when a "diagnosis or clinical impression" is required, that the diagnosis or clinical impression be made using terminology established in the most recent edition of the APADSMMD."

(b) Response: The requirement does not mandate a diagnosis or clinical impression for all services but mandates that such be made using the American Psychiatric Association Diagnostic and Statistical Manual of Mental DisordersTM.

(7) Subject: Provisions for health records

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, stated the following:

"Page 24, line 13 For clarify, recommend that the clause "if applicable" be added to (3)(a)f., since this provision will not be applicable for all health records.

f. If applicable, the Referral source's name and address;"

(b) Response: DMS is revising the language as recommended in an "amended after comments" administrative regulation.

(8) Subject: Therapist's intervention notes

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, stated the following:

"Page 26, line 9 (5)(a)2.b. requires the CDTC's notes to describe the "therapist's intervention", however, not all services are provided by a therapist. Recommend that this requirement be clarified accordingly."

(b) Response: DMS is revising the language in an "amended after comments" administrative regulation by replacing "therapist's intervention" with "behavioral health practitioner's intervention."

SUMMARY OF STATEMENT OF CONSIDERATION AND ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 10:020 and is amending the administrative regulation as follows:

Page 2

Section 1(2)(a)2.

Line 7

After "present", insert "or".

Page 2

Section 1(2)(a)3. and 4.

Lines 10 to 12

After "present", delete the following:

; or

4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present

Page 14

Section 3(3)(g)1.a.

Line 22

After “provided”, delete “to a recipient”.

Page 18

Section 3(3)(i)1.a.

Line 1

After “the”, insert “recipient”.

Delete “individual”.

Page 18

Section 3(3)(i)1.b.

Line 2

After “b.”, insert “Recipient’s”.

Page 18

Section 3(3)(j)1.b.(i)

Line 17

After “the”, insert “recipient”.

Delete “individual”.

Page 18

Section 3(3)(j)1.b.(ii)

Line 18

After “(ii)”, insert “Recipient’s”.

Page 20

Section 3(3)(k)3.a.(i)

Line 4

After “the”, insert “recipient”.

Delete “individual”.

Page 20

Section 3(3)(k)3.a.(ii)

Line 5

After “(ii)”, insert “Recipient’s”.

Page 21

Section 3(3)(m)2.c.

Line 7

After “address”, insert “the recipient’s”.

Page 24

Section 6(3)(a)1.f.

Line 13

After “f.”, insert “If applicable, the”.

Page 26

Section 6(5)(a)2.b.

Line 9

After “b.”, insert “Behavioral health practitioner’s”.

Delete “Therapist’s”.

Page 30

Section 6(14)(b)3.c.

Line 22

After “enrollee”, insert “the”.